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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,797	03/15/2002	Richard A. Hynes	4002-2968	3276
7590	02/22/2005			EXAMINER
Woodard, Emhardt, Naughton, Moriarty and McNett Bank One Center/Tower Suite 3700 111 Monument Circle Indianapolis, IN 46204-5137			PRIDDY, MICHAEL B	
			ART UNIT	PAPER NUMBER
			3732	
			DATE MAILED: 02/22/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/099,797	HYNES, RICHARD A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael B Priddy	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 June 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 and 12-40 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 8-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/15/2002</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election with traverse of the restriction requirement between the apparatus of Group I (claims 1-15 and 35-40) and the method of Group II (claims 16-34) in the reply filed on 06/04/2004 is acknowledged. The traversal is on the ground(s) that searching and examining both inventions can be made without serious burden. This is not found persuasive because while it may be true that some inventions are classified in both 606/61 and 128/898, searching for an invention classified in one of these subclasses does not inherently require searching in the other. Furthermore, because the inventions are distinct and have acquired a separate status in the art the search required, even if in the same subclass or subclasses, is necessarily different. Searching of distinct inventions requires different thought processes in order to find the best art. Therefore, searching two distinct inventions within the same application requires twice the consideration required in a application having only one invention. Searching and examining of both inventions of the present invention cannot be made without serious burden to the examiner.

The requirement is still deemed proper and is therefore made FINAL.

Applicant's election with traverse of the election of species requirement in the reply filed on 06/04/2004 is acknowledged. The traversal is on the ground(s) that the section of code the Examiner cited appears to address "independent and distinct inventions", not species and on the grounds that the number of species should be

limited to "a reasonable number", not a "single disclosed species" as required by the Examiner. These are not found persuasive because a) the species disclosed by Applicant are patentably distinct from one another and therefore qualify as "distinct and independent inventions" and b) in the present application the Examiner considers a reasonably number of species to be a single species.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-7 and 12-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuan et al. (U.S. 5,437,669). Yuan et al. teaches a spinal fixation system 20 for implantation of elongate support means medially of the spine in place of removed portions of spinous processes and comprising: a plurality of pedicle screws 30 spaced apart in two columns for fixation in bone on both sides of the spine; a spinal rod 22 extending along a path between said columns; cross supports 50, each said cross support 50 having two ends 53/54, one of said ends 53/54 being attached to one of said pedicle screws 30 in

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the one of said columns and the other of said ends 53/54 being attached to one of said pedicle screws 30 in the other of said columns; and a mounting bracket 52 having a yoke 51 receiving said spinal rod 22 and attached midway between said ends 53/54 to each of said cross supports 50; wherein each of said pedicle screws 30 has a multi-axial cross support end receiver 36 locked to one of said ends 53/54 of each cross support 50.

### ***Conclusion***

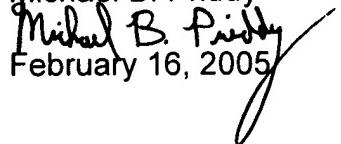
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B Priddy whose telephone number is (571) 272-4717. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael B. Priddy

  
February 16, 2005